What, When, Why?—Legal Issues and Practical Tips on IDEA's Prior Written Notice Requirement

Presented by

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When to Provide PWN?

• 34 C.F.R. §300.503—PWN required:

When school proposes, or refuses, to initiate or change identification, evaluation, placement, or provision of FAPE

Also, in revocation of consent situations

And, if IEP Team will implement an IEP with which parents disagree

When to Provide PWN?

"Propose" means when the IEPT decides to take action, or refuses to take an action

PWN not required if an option is considered or discussed, but not ultimately acted on

	When to Provide PWN? PWN required for every IEP change, no matter who initiates the change Changes in placement always require PWN	
	Beaverton SD (SEA OR 2017)—No PWN although student's time in "emotional growth" class increased while mainstreaming decreased	
	When to Provide PWN? Mesa Valley (SEA CO 2016)—No PWN until a month after placement violated IDEA, and may have denied a FAPE (serious infringement on parent rights)	
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	When to Provide PWN?	
	If a parent request for change in placement is denied, PWN must be provided (Constellation (SEA Ohio 2015))	
	Same for parent requests for evaluations (Columbus City Sch. Dist. (SEA Ohio 2016))	
	FBA proposals also require PWN (Letter to Anonymous (OSEP 2012))	

	PWN required even if parent agrees to action (Letter to Lieberman (OSEP 2008)) Also, for amendments to IEPs without meetings And, prior to graduation, as it is a change in placement (see 34 CFR §300.102(a)(3)(iii))	
0	More PWN Issues	
	 Must proposed changes in placement specify a particular school location? 	
	Issue is highly jurisdiction-specific	
	Some circuits say yes, others say only placement must be set forth, not specific location or school	
	Commentary to 2006 regs appears to support latter view	
Ó	More PWN Issues	
	• What about temporary program changes?	
	Short changes, such as when a student with ASD was pulled four days from her music class while her violin was being repaired after she damaged it, do not require PWN (Washoe Co. (SEA NV 2010))	
	Changes of 10 days or less are probably OK	

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	More PWN Issues
	 What about changes in educational methodology?
	No PWN required, unless IEP happens to set forth a specific methodology (which is not generally required)
	Similarly, no PWN is needed for changes to details of programs that are not listed on IEP (Coeur D'Alene Sch. Dist. No. 271 (SEA Idaho 2013)—change to transportation details)
T	More PWN Issues
	What about initial identification?
	PWN must set forth proposed eligibility category (Letter to Atkins-Lieberman (OSEP 2010), in addition to notice of qualification under IDEA
	• Is there a timeline for providing PWN?
	Timeline for providing PWN prior to action is set by States
	Must be a "reasonable" time before the district implements the action or refusal, but after the decision is made
	This is so parents have "a reasonable time to fully consider the change and respond to action before it is implemented." (Letter to Chandler (OSEP 2012))

Ì	• Is there a timeline for providing PWN?	
	Parents can waive the PWN timeline, so action can go into effect immediately (form should be executed for that purpose)	
Í	Potential Impact of Violation	
	 Do PWN violations equate to a denial of FAPE? 	
	Yes, if the procedural violation results in a loss of educational opportunities for the student, or if it seriously infringes on the parents' right to meaningfully participate in the IEP development process	
	Can happen with PWN violation (In re: Student with a Disability, 118 LRP 11451 (Maine SEA 2018)(cumulative violations)	
Ø	Content of PWN	
	Description of the action proposed or refusedExplanation why the school proposed or	
	refused the action	
	assessment, record, or report used as a basis	
	Statement that parents have the protection of	
	the IDEA procedural safeguards and how they can obtain a copy thereof	
))	refused the action Description of the evaluation procedure, assessment, record, or report used as a basis for the proposed or refused action Statement that parents have the protection of the IDEA procedural safeguards and how they	

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- Sources for parents to contact for help in understanding IDEA provisions
- Description of other options the IEP team considered and the reasons why those options were rejected
- Description of other factors relevant to the school's proposal or refusal. 34 C.F.R. §300.503(b)

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How descriptive must the PWN be?

Specific and clear enough that parents can understand the actions/refusals, and their underlying rationale

Parents should not have to "read between the lines" of jargon (Fern Ridge Sch. Dist. 28J (SEA OR 1990))

• How descriptive must the PWN be?

PWNs should address all substantive issues decided in IEP meetings, as well as significant parental concerns (*In re: Student with a Disability* (Maine SEA 2017)

Understandable language and native language (unless clearly unfeasible)—See Riverside USD (SEA CA 2017)(failure to provide PWNs in Spanish was procedural violation, but did not rise to level of FAPE denial, in light of parent involvement)

I	• How descriptive must the PWN be?	
1	Cincinnati Public Schools (SEA Ohio 2016)	
0	Action—"Annual IEP"	
	Explanation"—"Required by law" Options—None, required by law	
	Operation Provides Frequency by Name	
	Too vague, encompasses various actions with respect to PLOP, goals, services,	
	mods, related services, etc	
	• Could not the IEPTeam report include the	
	PWN content?	
	Potentially yes, but difficult to ensure with consistency, as a district practice (In re:	
	Student with a Disability (SEA ND	
	2017)(meeting notes were insufficient as PWN, failed to address refusal of aide)	
	Each action/refusal requires compliance	
	with 7-part content requirement, which is difficult to accomplish while the IEP report	
	being developed at an IEP meeting	
	Stand-alone form, consistent with IEP, is a better practice	
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	• Practical Ideas?	
	Drafting during IEP meeting?	
0	Drafting right after meeting?	
	Focus on explanation for actions/refusals	
	(most important substantive component)	

	• Forms suggestions?	
	This is one area where the form provides no assistance	
	Forms just list the 7 required areas—completing the blanks is the important	
	part	
	Identification Scenario	
	• Student currently eligible as MR, SI	
	Parent submits private eval diagnosing ASDParent wants IEP Team to replace current	
	categories with AU instead	
	• At IEP meeting, team notes recent FIE	
	addressed possibility of ASD, but testing did not support diagnosis	
	 Team also notes private eval lacking in AU testing (pediatrician diagnosed ASD) 	
	testing (pediatrician diagnosed ASD)	
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	Identification Scenario	
	 Team offers new psych eval to specifically address ASD, after review of private eval 	
	• Team asks for consent to speak to Dr (parent	
	declines)Team notes good progress on IEP objectives	
	and speech	

Identification Scenario

- I. What is action proposed?
- 2. Why is action being refused?
- 3. What options were considered?
- 4. Bases for refusal?
- 5. Other factors?

Identification Scenario

What is action proposed?

Parent proposes to replace MR/ID and SI eligibility categories with AU, based on private pediatrician's diagnosis.

Identification Scenario

Reasons why action refused?

- Current FIE addressed ASD possibility
- FIE testing did not support ASD finding
- · Private diagnosis does not include testing
- FIE data supports current eligibility

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Identification Scenario Other options considered? • Additional evaluation by District • Exchange of info with pediatrician	
Identification Scenario Bases for refusal? District FIE, including ASD testing Lack of testing in Dr's diagnosis District offer of additional eval Data showing good progress with present IEP	
Identification Scenario Other factors? • Parent declined exchange of info with Dr. • Student shows good progress	

Evaluation Scenario

- 2nd-grade student is in a tiered reading intervention program, not doing too well
- Now is struggling more in classes, although not failing, but mom is concerned
- Staff discuss further reading interventions, but remind parent she has right to request sp ed evaluation
- · Parent indicates she wants sp ed evaluation
- Staff agree to proceed with evaluation

Evaluation Scenario

What is action proposed?

District proposes to proceed to initial evaluation at parent request

Evaluation Scenario

Reasons why action proposed

- · Parent requested evaluation
- Limited response to intervention

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Evaluation Scenario Other options considered · Proceed with interventions • Continue interventions during evaluation · Rejection of evaluation request **Evaluation Scenario Bases for action** • Parent request • Intervention program data · Classroom grades **Evaluation Scenario** Other factors • Parent will consider continuing interventions while evaluation proceeds • Intervention data can be used in FIE

Placement Scenario

- 8th grader with ED, OHI (ADHD)
- · In resource and general ed classes
- · Behavior has deteriorated in last 2 years
- Increasing aggression, leaving class, class disruption, wandering halls, confronting staff
- FBA/BIP has been reviewed and revised multiple time, behavior specialist has consulted, update psych evals, trial 1:1 aide, teacher inservices
- Staff feel there is need for behavior unit

Placement Scenario

- Parents oppose behavior unit placement (feel student will model more bad behavior, afraid placement will be permanent, concerned military will reject student due to placement)
- Teachers indicate he is not modeling appropriate behavior in classes, that he is not making behavioral or academic progress, and that he is impeding others from learning
- Staff explained level system of unit, and reiterated confidential nature of records

Placement Scenario

What is action proposed?

District proposes to change student's placement to self-contained behavior unit, but parents want him to remain in present settings

Placement Scenario

Reasons for action proposed

- Student's IEP can no longer be successfully implemented in present settings
- Efforts at a variety of supplementary aids and services have been unsuccessful
- · Behavior significantly deteriorating
- Student needs highly structured setting with low staff/student ratio, constant behavioral intervention, level system to LRE

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Options considered

- Continue current placement
- Attempt additional support services
- Customized level system for return to regular classes
- Transfer to another campus

Placement Scenario

Bases for action

- Documentation of behavior incidents
- Summary of attempted support services
- Psych eval (indicates need for highly structured setting)
- Classroom grades/progress reports

Placement Scenario

Other factors

- Need to address deterioration of behavior and academics outweighs potential negative modeling from other unit students
- Level system allows for gradual retransition to regular settings
- · Placement documents remain confidential
- Secure setting needed to avoid potentially serious confrontation with staff or security

Placement Scenario

Other factors

- Need to address deterioration of behavior and academics outweighs potential negative modeling from other unit students
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